

**Mitchell Lazarus**  
lazarusm@arentfox.com  
Tel: 202/857-6466  
Fax: 202/857-6395

December 11, 1996

RECEIVED

DEC 11 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

**Re: Rules and Policies for Local Multipoint Distribution Service  
and for Fixed Satellite Services, CC Docket No. 92-297**

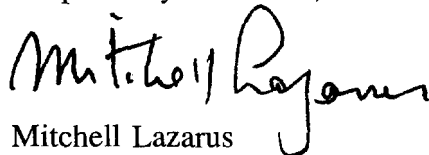
Dear Mr. Caton:

On behalf of Sierra Digital Communications, Inc. ("Sierra"), I am filing the original and one copy of this letter to accompany the attached written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

Kindly date-stamp and return the extra copy of this letter provided.

If there are any questions about this filing, please call me directly at the number above.

Respectfully submitted,

  
Mitchell Lazarus

Enclosure

cc (w/encl):

Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Jane E. Mago  
Blair Levin

No. of Copies rec'd 021  
List ABCDE

# **Arent Fox**

William F. Caton, Acting Secretary

December 11, 1996

Page Two

cc (w/encl): (continued)

Jackie Chorney

Rudolfo M. Baca

Suzanne Toller

David R. Siddall

Michele Farquhar

David Wye

Robert James

Robert L Pettit, Esq., Counsel for Texas Instruments, Inc.

Hal Tenney, Sierra Digital Communications, Inc.



**Mitchell Lazarus**  
lazarusm@arentfox.com  
Tel: 202/857-6466  
Fax: 202/857-6395

December 11, 1996

Commissioner Rachelle B. Chong  
Federal Communications Commission  
Room 844  
1919 M Street NW  
Washington DC 20554

**Re: Rules and Policies for Local Multipoint Distribution Service  
and for Fixed Satellite Services, CC Docket No. 92-297**

Dear Commissioner Chong:

On behalf of Sierra Digital Communications, Inc. ("Sierra"), I am writing in response to the e-mail of December 3, 1996, sent to your office by Robert Pettit on behalf of Texas Instruments ("TI").

Sierra agrees with TI that the Commission should expeditiously resolve the outstanding issues in this proceeding. But to do so by giving short shrift to 31 GHz point-to-point applications, as TI urges, would gravely disserve the public interest. Moreover, TI raised these same issues in almost the same words three months ago, and Sierra responded at that time.<sup>1/</sup> For TI to rehash the same matters now does nothing to advance the proceeding.

TI alleges that to allocate less than all of the 31 GHz band to LMDS would be "grossly wasteful" and would amount to "warehousing" spectrum. TI proposes to give the entire band to LMDS and to protect current point-to-point users by grandfathering current licensed operations.

As Sierra has repeatedly shown, equipment at 31 GHz has only recently become inexpensive enough to be available to the city, county, and state communications systems, hospitals, schools, and traffic control and monitoring systems that now account for more than 70% of the transmitters in the band.

---

<sup>1/</sup> Letter of Texas Instruments to Mr. William F. Caton (filed Sept. 16, 1996); Letter of Sierra Digital Communications, Inc. to Mr. William F. Caton (filed Sept. 19, 1996).

# Arent Fox

Commissioner Rachelle B. Chong

December 11, 1996

Page 2

As a result, the rate of growth in the band is prodigious, with 75% more equipment shipped in 1996 than in 1995, and four times more equipment expected in 1997 than in 1996. This pattern of penetration is consistent with other new telecommunications technologies, including cellular, and strongly supports a finding of public interest in point-to-point public safety and other applications in the band. TI's proposal to grandfather existing operations, while allocating the entire band to LMDS, would choke off this growth and make the band unavailable to the large majority of public safety agencies around the country.

TI's use of the pejorative term "warehousing" is incorrect and misleading. Sierra's efforts to ensure that spectrum is available for the use of its customers is not "warehousing," any more than are TI's efforts to have spectrum allocated for the use of its own customers. Nor is Sierra seeking to withhold spectrum in order to increase its market share, or for any other anticompetitive reason. To the contrary, Sierra's economic self-interest as an equipment manufacturer, like TI's, lies in having spectrum used, not held out of use.

TI continues to insist that the record supports more than 1,000 MHz of unencumbered spectrum for LMDS. It does not. True, in 1993 the Commission's first LMDS proposal suggested two providers per market, each using 1 GHz,<sup>2/</sup> a notion that failed soon afterward for want of spectrum. But even then the Commission did not then suggest that one LMDS operator needs more than 1,000 MHz to provide a viable service. Indeed, no one had ever suggested it until the Commission first raised the idea in the Fourth Notice,<sup>3/</sup> and even the Fourth Notice offered no support or rationale for the additional spectrum.

TI's contention that an allocation of the full 31 GHz band "could be used to provide a wider array of services to more people" is a belated effort to justify an excessive allocation by redesigning the service at the last minute. Of course TI wants more spectrum for LMDS. But TI's recital of additional functions that LMDS "could" or "may" support, if it had the additional spectrum, is not the same as showing that more spectrum is needed to fulfill the mission laid

---

<sup>2/</sup> Rules and Policies for Local Multipoint Distribution Service, 8 FCC Rcd 557, 560 (1993).

<sup>3/</sup> First Report and Order and Fourth Notice of Proposed Rulemaking, FCC 96-311 (released July 22, 1996).

# Arent Fox

Commissioner Rachelle B. Chong

December 11, 1996

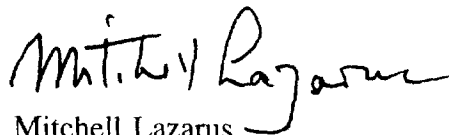
Page 3

out in the Commission's notices. Particularly disturbing is TI's statement that it "fully anticipates" LMDS operators providing the point-to-point traffic management services now implemented at 31 GHz, if they are given enough spectrum. TI cannot commit the ultimate holders of LMDS licenses in 493 BTAs. And even if it could, the public interest in 31 GHz point-to-point operations cannot be satisfied by a public safety agency's reliance on a monopoly commercial provider that is free to extend or withdraw service at will.

In short, the present record cannot rationally support a conclusion that LMDS needs the entire 31 GHz band. Indeed, TI's latest filing is primarily an effort to use the Commission's processes to enhance its ability to market LMDS equipment, while thwarting a technology it does not manufacture. An allocation to LMDS beyond its demonstrated needs, in derogation of the public interest in 31 GHz point-to-point operations, would be arbitrary and capricious.

Sierra's proposed division of the 31 GHz band (180 MHz for LMDS and two 60 MHz blocks for point-to-point) is a fair and rational resolution of this proceeding. This division gives LMDS more than the full 1,000 MHz of unencumbered spectrum justified by the record, in addition to another 150 MHz shared with satellite interests and suitable for hub-to-subscriber use, and adequately acknowledges the public interest in point-to-point operations. The Commission should adopt this division and move forward promptly with its LMDS auction plans.

Sincerely,



Mitchell Lazarus

cc (by hand delivery):

Office of the Secretary (two copies)

Chairman Reed E. Hundt

Commissioner James H. Quello

Commissioner Susan Ness

Jane E. Mago

Blair Levin

Jackie Chorney

Rudolfo M. Baca

# **Arent Fox**

Commissioner Rachelle B. Chong

December 11, 1996

Page 4

cc (by hand delivery): (continued)

Suzanne Toller

David R. Siddall

Michele Farquhar

David Wye

Robert James

Robert L. Pettit, Esquire

Counsel for Texas Instruments, Inc.

cc (by fax):

Hal Tenney

Sierra Digital Communications, Inc.